

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**THOMAS FELDSER,**  
**Plaintiff,**

**v.**

**MAJOR MIRANDA, et al.,**  
**Defendants.**

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**CIVIL ACTION NO. 19-CV-3506**

**ORDER**

AND NOW, this 30th day of September 2019, upon consideration of Plaintiff Thomas Feldser's Motion to Proceed *In Forma Pauperis* (ECF No. 5), Prisoner Trust Fund Account Statement (ECF No. 6), and *pro se* Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Thomas Feldser, #1026585, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Curran Fromhold Correctional Facility or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Feldser's inmate account; or (b) the average monthly balance in Feldser's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Feldser's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Feldser's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of Curran Fromhold Correctional Facility.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, Feldser's claims based on his filing of prison grievances, is **DISMISSED with prejudice** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Feldser's claims based on official capacity/municipal liability, First Amendment free exercise rights, and First Amendment/retaliation are **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

6. Feldser is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible claims. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Feldser's claims against each defendant, and shall bear the title "Amended Complaint" and the caption 19-3506. If Feldser files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Feldser's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case. When drafting his amended complaint, Feldser should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

7. If Feldser does not file an amended complaint, the Court will direct service of his initial Complaint on Defendants Officer M. Boone and Officer R. Sullivan to proceed upon his claims of excessive force and deliberate indifference, and on Defendants Miranda and Delaney to proceed on his procedural due process claims. Feldser may also notify the Court that he seeks to

proceed only on these claims rather than file an amended complaint. If he files such a notice, Feldser is reminded to include the case number for this case, 19-3506.

**BY THE COURT:**

**/s/ Cynthia M. Rufe**

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**CYNTHIA M. RUFÉ, J.**